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ADMINISTRATIVE POLICY

NUMBER: ES.A.9.2
GENERAL APPLICATION
WHITE-COLLAR POSITIONS
EFFECTIVE: 8/13/04

STATE OF WASHINGTON
DEPARTMENT OF LABOR & INDUSTRIES
EMPLOYMENT STANDARDS

SEE ALSO: ES.A.9.3 - 8,
[ES.A.8.1](#) and [ES.A.8.2](#),
[ES.A.9.1](#), [ES.A.10.1](#),
[ES.A.10.2](#) and [ES.A.10.3](#)

CHAPTER: [RCW.49.46.010\(5\)\(c\)](#), [RCW 49.46.130\(2\)\(a\)](#),
[WAC 296-128-500](#) - 540

TITLE: GENERAL INFORMATION APPLICABLE TO EXEMPTIONS FROM
MINIMUM WAGE AND OVERTIME REQUIREMENTS FOR WHITE-
COLLAR WORKERS

The administrative policies for the white-collar exemptions have been separated into individual policies and are identified by the following numbers.

ES.A.9.2	General Application
ES.A.9.3	Executive (Short test)
ES.A.9.4	Administrative (Short test)
ES.A.9.5	Professional (Short test)
ES.A.9.6	Computer Professional
ES.A.9.7	Outside Sales
ES.A.9.8	Definition of Fee Basis

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GENERAL APPLICATION

1. Employees in executive, administrative, professional, computer professional, and outside sales positions are exempt from the Minimum Wage and Overtime Act, [RCW 49.46](#), and its provisions.

2. Exemption to Minimum Wage and Overtime for Certain Types of Employees (RCW 49.46.010 (5)(c)). [RCW 49.46.010\(5\)\(c\)](#) removes from the definition of “employee” for purposes of minimum wage and overtime individuals employed in “a bona fide executive, administrative or professional capacity” or in the capacity of “outside salesman.”

The statute does not define the terms “executive, administrative, professional, or outside salesman”, but delegates that authority to the Department by rulemaking. The Department’s rules defining the above terms are found at WAC [296-128-500](#)-540, including the computer professional exemption adopted by the department in 1998.

3. General Considerations When Determining Whether an Employee is Exempt from Minimum Wage and Overtime as Executive, Administrative, Professional or Outside Sales.

Employers are not required to claim these exemptions. They may pay minimum wage and overtime to all of their employees. Employers choose to claim the exemptions and it is their burden to demonstrate that a particular exemption applies. Exemptions to the wage and hour laws are to be construed narrowly. Employers should carefully check the exact terms and conditions of an exemption before applying it.

A title alone is not sufficient to meet the requirements of these exemptions. The exemption is determined by the employee’s actual job duties performed and on the actual payment on a salary basis the equivalent of \$250 per week. Should an exempt worker’s duties or method of payment change during their employment so that they no longer meet the exemption’s criteria, the worker would no longer be considered exempt and all minimum wage and overtime provisions would apply from the date the criteria were no longer met.

In addition to “duties” requirements, executive, administrative, and professional employees must be compensated on a “salary basis” in order to qualify for the exemption from minimum wage and overtime. The amount of the weekly salary determines which test is to be applied. If the employee is not paid by the week, the requirement will be met if the salary translates into the appropriate weekly equivalent. A salary must be a true salary, not a mere “ruse” for treating the employee as an hourly worker. See Administrative Policy [ES.A.9.1](#) for Questions and Answers About Salary Basis Regulation, [WAC 296-128-532](#) and [WAC 296-128-533](#) for private and public employers adopted effective February 21, 2003. The salary basis regulations apply to executive, administrative, and professional workers.

All of the applicable requirements of the related section must be met for an exemption to apply and merely meeting one or two requirements does not fulfill the exemption.

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Application of or recognition of these exemptions will be on a case-by-case basis depending on the relevant facts.

If the specific requirements of a particular exemption are not met, employees are entitled to the payment of overtime for hours worked in excess of forty per week, regardless whether they are paid on a salary, hourly, or other basis.

4. See [ES.A.8.1](#) entitled "Overtime" and [ES.A.8.2](#) for brochure entitled "How to Compute Overtime" for specific examples of how to compute overtime when an exemption is not met.

5. If the worker meets all of the criteria in the short test, the requirements of the long test are not considered. If the worker does not meet the requirements of the short test, all of the criteria in the long test must be met.

6. For the purposes of this administrative policy, the short test applications will be provided for each applicable exemption. This policy does not include the department's policies on the long test. If there are questions about the long test, contact the department. The L&I offices can be found in the telephone directory and on-line @ <http://www.lni.wa.gov> or contact the department in Olympia at 1.360.902.5316.

7. The short test does not apply to employees in an academic administrative exemption in an educational setting. **See ES.A.9.4**, paragraph 10.